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Recent Case Decisions

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Federal

Supreme Court of the United States

Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591 (2015).

Retail natural gas purchasers (Purchasers) filed suit against interstate pipeline companies (Traders) for violating state antitrust laws by manipulating and falsely reporting information for gas price indices. Traders argued that the Natural Gas Act grants exclusive power to the Federal Energy Regulatory Commission (FERC) to regulate interstate, or *wholesale*, pricing of natural gas. The District Court agreed and granted Traders' motion for summary judgment, finding that the Natural Gas Act pre-empted Purchasers' state law antitrust claims. The Ninth Circuit reversed, emphasizing that Congress narrowly tailored the Natural Gas Act so as to leave much of the regulatory powers of the natural gas industry with the States. The Supreme Court affirmed the Ninth Circuit's decision, holding that the "test for purposes of pre-emption in the natural gas context is whether the challenged measures are 'aimed directly at interstate purchasers and wholesales for resale' or not." Purchasers' allegations targeted Traders' practices as they affected *retail* pricing, not wholesale, and the power to regulate retail sales rests firmly with the States.

3rd Circuit

Midstates Petroleum, LLC v. State Mineral & Energy Bd. of State, 2015 WL 1650549, 2014-1168 (La.App. 3 Cir. 2015).

State, Appellant, issued original owner a lieu warrant due to sale of land without title in 1919, with his heirs assigning their interests to a subsequent owner. A lieu warrant creates a constitutionally protected contractual right to land with minerals that cannot be impaired by either statute or subsequent constitutional amendment by state. In 1921, State added a constitutional prohibition of mineral right sales by the State, creating a reservation. In 1944, a subsequent owner was issued a patent. The 1944 patent holder's heirs, Appellees, executed an oil and gas lease in 2011. Lessee filed petition for *concursus*, seeking clarification as to who owned the mineral rights on the property. The Trial Court ruled for Appellees, holding that they owned the mineral rights to which the Court of Appeals affirmed.

District of Columbia Circuit

Missouri Public Service Com'n v. F.E.R.C., 783 F.3d 310 (D.C. 2015).

The Missouri Public Service Commission (MoPSC) petitioned for review of an order issued by the Federal Energy Regulatory Commission (FERC) that would allow pipeline companies to use the "benefit exception" in determining their initial rates. The benefit exception allows companies to figure their acquisition and asset purchase costs into initial rates when the purchase price is less than the construction of a new facility. After FERC issued the order allowing pipelines to make use of the benefit exception, MoPSC petitioned for a review of the new application to assess the benefits passed to the consumer. An administrative law judge (ALJ) denied the application of the benefit exception on the grounds that the pipeline had not met its burden proving that the cost to construct was considerably higher than the pipeline's purchase price. On appeal, the Circuit Court held that the ALJ erred in requiring the difference between the purchase price and construction price to be exorbitant, therefore allowing the benefit exception to be used by a pipeline company.

State

Iowa

LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846, 2015 WL 1586184 (Iowa 2015).

The State of Iowa promulgated taxes during natural gas delivery at variable rates factoring in both volume and the taxpayer's geographic location. The state statute imposes the replacement tax on consumers who directly take natural gas from an interstate pipeline. Plaintiff, an ethanol manufacturing plant, connected directly to a gas pipeline and bypassed a local distribution company in an attempt to avoid the replacement tax placed on the gas delivery. Plaintiff filed an administrative claim seeking a tax refund on grounds of equal protection. The claim was rejected by the Iowa Department of Revenue and the District Court, but the Supreme Court of Iowa retained the appeal. After applying the rational basis test, the Court held the statutory

scheme was valid and did not violate the equal protection clause.

Kansas

Netahla v. Netahla, 346 P.3d 1079, 2015 WL 1611965 (Kan. 2015).

Grantors entered into a lease, then subsequently executed a "Sale of Oil and Gas Royalty," or a mineral deed, to grantee. The mineral deed contained a "subject to" clause referencing the lease. The well was shut-in from 1985 to 2003. In 2012, grantors' heirs, Plaintiffs, sought a declaratory judgment for termination of the royalty interest held by grantee's heirs, Defendants. The Trial Court granted summary judgment for Defendants, and the Appellate Court affirmed. The Supreme Court of Kansas held the mineral deed's "subject to" did not incorporate the earlier lease's provisions, therefore, only the provisions of the mineral deed on the face of the document may be used to determine whether defendants' mineral interest has terminated. The shut-in royalties pursuant to the executed lease did not perpetuate the deed beyond its term. The deed's perpetuation could only be sustained with actual production.

North Dakota

Hall v. Malloy, 2015 WL 1913041, 2015 ND 94 (N.D. 2015).

Defendant owned a large amount of mineral acres and conveyed his interest into a trust, naming both him and his wife as trustees. Defendant and his wife later divorced. Their divorce decree purported to divide Defendant's mineral interests equally with his ex-wife. Plaintiff was a successor in interest to Defendant after the divorce and filed this quiet title action claiming that he owned nine mineral acres, rather than four and a half. The Trial Court granted Plaintiff's motion summary judgment, and the Supreme Court of North Dakota affirmed, holding that the divorce decree was not a "proper instrument" under the doctrine of after-acquired title. The divorce decree only purported to convey half of Defendant's interest and not half of the interest in the minerals themselves.

Pennsylvania

Kennedy v. Consol Energy, Inc., 2015 WL 1813997 (Pa. Super. Ct. 2015).

Plaintiffs owned the oil and gas estate, and the Defendants owned the coal estate in a tract of land. After the Defendants produced and sold coalbed methane gas from the property, the Plaintiffs filed suit to quiet title as to the ownership of the coalbed methane gas. In addition, the Plaintiffs alleged trespass and conversion. The Trial Court granted judgment for the Defendants on all claims. In affirming the judgment, the Appellate Court followed the general rule that the owner of the coal estate owns the coalbed methane gas contained in the coal when the severance of the coal estate does not clearly address the ownership of coalbed methane. The Appellate Court also held that this was not a trespass nor conversion. The trespass claim failed because the severance granted Defendants the right to enter the property to economically develop its interest in the coal estate. This case did not constitute conversion because Defendants lacked the requisite intent to support a conversion claim.

Texas

Aycock v. Vantage Forth Worth Energy, LLC, 2015 WL 1322003 (Tex. App. 2015).

The Plaintiffs were unleased co-tenants on a tract of land under an oil and gas lease, to which Defendant was the lessee. Plaintiffs sent a letter to Defendant stating they wished to discuss the lease provisions and stipulations. Defendant never responded and the lease terminated by law without either drilling or production. Plaintiffs, the self-named "unpaid mineral cotenants," sued Defendant for recovery of unpaid bonus money given in consideration for an oil and gas lease. The Trial Court granted summary judgment for Defendants. The Appellate Court affirmed, holding that if plaintiffs wish to seek recovery for any unpaid bonus, it must be from their leased co-tenants, not from Defendant lessee.

State

California

Conway v. State Water Resources Control Board, 185 Cal.Rptr.3d 490 (Cal.Ct.App. 2015).

A lake is considered polluted and the Regional Water Quality Control Board (RWQCB) established the total maximum daily load (TMDL) of pollutants allowed in the lake. The lakefront property owners filed a *writ of mandamus* seeking to contest the RWQCB's adoption of the Basin Plan Amendment, which established the TMDL for lake-based pollutants. The Superior Court denied the writ, and the property owners appealed. The California Court of Appeals held that the RWQCB could state TMDL pollution allocation in concentrates. Additionally, the Basin Plan Amendment did not violate the statute by specifying the manner of compliance for waste discharge requirements.

Contra Costa County v. Pinole Point Properties, LLC, 186 Cal.Rptr.3d 109 (Cal.Ct.App. 2015).

A group of homeowners suffered property damage after excess water runoff following a storm and sued Plaintiffs in this case, Contra Costa County (CCC), and Defendants Pinole Point Properties (PPP). Shortly thereafter, the homeowners settled and CCC filed a cross-complaint alleging negligence. The Trial Court held the county's conduct was reasonable and "Pinole Point's failure to maintain the drainage channel had been entirely unreasonable." On appeal, Pinole Point argued it had no legal duty to maintain the channel. The Appellate Court approved the application of the reasonableness test that holds upper property owners liable for water runoff if they failed to exercise reasonable care in the use of their property so as to avoid injury to adjacent landowners.

Colorado

Concerning Application for Water Rights of Colorado Water Conservation Board in the San Miguel River, 346 P.3d 52, 2015 WL 1620214 (Colo. 2015).

The Colorado Water Conservation Board (CWCB), Plaintiff, voted to appropriate an instream flow and filed a water application for water rights with the Water Court. Defendant opposed the instream flow throughout the notice and comment process and claimed it was deprived of procedural due process. Plaintiff filed for water rights with the District Court, Water Division. On cross motions for determining a question of law on whether the Plaintiff acted in a quasi-judicial or quasi-legislative capacity, the water court ruled for Plaintiff. The Supreme Court of Colorado affirmed under the reasoning that Plaintiff was acting in a quasi-legislative capacity because it is a policy decision to "preserve the natural environment" on behalf of the people of the state of Colorado, and because Plaintiff was not adjudicating individual rights.

Iowa

Clarke County Reservoir Com'n v. Abbott, 2015 WL 1586257, No. 14-0774 (Iowa 2015).

The joint public-private Clarke County Reservoir Commission (Commission) filed a declaratory judgment action seeking a declaration of a public use project against 54 separate landowners for the acquisition of private land through eminent domain. Landowners challenged the authority of the Commission to initiate the condemnation proceeding. The landowners alleged that the Commission's power to use eminent domain for public use was invalid since a private entity served on the Commission. The District Court upheld the Commission's use of eminent domain for public usage on the grounds that public water needs constituted a valid public usage despite the private entity serving on the Commission. On appeal, the judgment was vacated for lacking the strict compliance required for an eminent domain taking, therefore the judgment was invalidated due to the Commission's inclusion of a private entity.

Kansas

Garetson Bros. v. American Warrior, Inc., 2015 WL 1510692 (Kan. Ct. App. 2015).

Landowners acquired a single water well in 1950, and in 2005 filed a complaint with the Kansas Department of Agriculture's Division of Water Resources claiming that neighboring water wells constructed in 1964 and 1976 by American Warrior, Inc. (AWI) had impaired their senior right of usage. A Kansas statute vests a senior water right to the first person to divert water from any source and use it for beneficial purposes. The Trial Court granted a

temporary injunction in favor of Landowners, the senior right holders, reasoning that the senior right holder "would suffer irreparable harm if its 'first in time water right is . . . depleted year after year as a result of ongoing impairment'" The Appellate Court affirmed the Trial Court's decision.

SELECTED AGRICULTURE DECISIONS

Federal

District Court, District of Columbia

Fed. Forest Res. Coalition v. Vilsack, No. CV 12-1333 (KBJ), 2015 WL 1906022 (D.D.C. 2015).

Defendants, the Secretary of Agriculture and the U.S. Forest Service, are tasked with the regulation of the nation's forests and grasslands. Plaintiffs are members of the lumber industry, as well as groups that use forests for recreational activities. Plaintiffs filed suit alleging that the most recent Planning Rule issued by Defendants exceeds the Forest Service's authority by giving environmental concerns a privilege over competing concerns such as recreation and logging. The court denied Plaintiffs' motion for summary judgment and granted Defendants' motion to dismiss because the Plaintiffs lacked standing to assert there claims due to Plaintiffs' failure to show actual or imminent injury that resulted from the new Planning Rule.

State

Alabama

Dickinson v. Suggs, 2015 WL 1388142 (Ala. Civ. App. 2015).

The Suggs, Plaintiffs, brought an action against the Dickinsons seeking a declaration of adverse possession for two parcels of land held by the Dickinsons in title. The Trial Court determined that the Suggs established adverse possession over the disputed parcels. On appeal, the Alabama Supreme Court noted, there are two types of adverse possession: 1) statutory & 2) prescriptive, but in cases of boundary disputes among neighboring landowners a third "hybrid" form of adverse possession is used. The Court noted that the hybrid exception can establish adverse possession in 10 years, as opposed to the other forms which require 20 years, of adverse possession to establish claim to the land, thereby affirming the Trial Court's decision.

Cordova, et al. v. R & A Oysters, Inc., 2015 WL 1934389 (S.D. Ala. 2015).

Plaintiffs were migrant workers employed by Defendants to shuck oysters under a temporary visa. Plaintiffs filed suit alleging that Defendant violated the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Workers Protection Act (AWPA). Plaintiffs also alleged that Defendants breached contracts between Plaintiffs and Defendant, and between Defendants and the Department of Labor (DOL). Defendants filed a motion to dismiss the AWPA and breach of contract claims. The Court granted the motion to dismiss the AWPA claim and the breach of the DOL contract claim, while denying the motion as to the breach of the contract between Plaintiffs and Defendant. The court found that Plaintiffs were not "migrant agricultural workers" because oysters are not an "agricultural commodity" based on the ordinary meaning of the terms and the legislative history of the AWPA. The court found that the DOL contract lacked adequate consideration, because promising to perform an act that the law requires—here, paying the prevailing wage rate—has no value for purposes of consideration.

ARTICLES OF INTEREST

OIL AND GAS

Thomas O. Mcgarity, *But What About Texas? Climate Disruption Regulation in Recalcitrant States*, 39 Harv. Envtl. L. Rev. 79 (2015).

Frank Sylvester, Robert M. Malmsheimer, *Oil and Gas Spacing and Forced Pooling Requirements: How States Balance Energy Development and Landowner Rights*, 40 U. Dayton L. Rev. 47 (2015).

Yong Eoh, *Yes, No, Maybe So: Uncertainty in Texas Groundwater Withdrawal for Hydraulic Fracturing*, 52 Hous. L. Rev. 1227 (2015).

Caleb Madere, *Covert Capture: Hydraulic Fracturing and Subsurface Trespass in Louisiana*, 75 La. L. Rev. 865 (2015).

Jamie Kay Ford, Erick Giles, *Climate Change Adaptation in Indian Country: Tribal Regulation of Reservation Lands and Natural Resources*, 41 Wm. Mitchell L. Rev. 519 (2015).

AGRICULTURE

Amy Cordalis, Daniel Cordalis, *Indian Water Rights: How Arizona v. California Left an Unwanted Cloud Over the Colorado River Basin*, 5 Ariz. J. Envtl. L. & Pol'y (2014).

For a more complete list of articles related to agricultural law, please consult the Agricultural Law Bibliography of the National Agricultural Law Center, http://www.nationalaglawcenter.org/reporter/caseindexes/. This bibliography is updated quarterly and provides a comprehensive listing of agricultural law articles.